

**SYNOPSIS**

**PURCHASERS' USE TAX – BURDEN OF PROOF MET IN PART –** At hearing the administrative law judge may allow the parties to stipulate and/or concede certain legal issues, thereby resulting in a revised assessment which Petitioner has agreed to pay.

**FINAL DECISION**

The Director of the Field Auditing Division of the West Virginia State Tax Commissioner's Office conducted an audit of the books and records of the Petitioner.

Thereafter, the Director of this Division of the Commissioner's Office issued a purchasers' use tax assessment against the Petitioner.

This assessment was for the period of April 1, 1998 through March 31, 2003, for tax and interest.

Thereafter, by mail, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. See W. Va. Code § 11-10A-8(1) [2002].

At the outset of the hearing the parties asked that they be allowed to meet prior to going on the record to see if certain issues could be stipulated and/or conceded in order to expedite the proceedings.

Said request was granted by the administrative law judge, whereupon in due course the Petitioner conceded two (2) of the legal issues and Commissioner's counsel conceded the third issue.

The administrative law judge ruled that within ten (10) days the Division would revise the assessment in accordance with the above and that the results would be forwarded to Petitioner's counsel prior to a final determination by this tribunal.

### **FINDINGS OF FACT**

1. Petitioner made certain payments to Company A under a non-competition agreement which the Tax Commissioner agreed to delete from the assessment.

2. Petitioner made certain payments to Company B which Petitioner concedes are subject to use tax.

3. Petitioner made certain payments to an out-of-state citizen which Petitioner concedes are subject to use tax.

### **DISCUSSION**

The sole issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part, see W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

In this case, the parties conceded at the hearing that the assessment should be affirmed in part because a portion of the contested items was indeed taxable, while another portion was not. In due course, both sides reviewed the recomputation of tax and have agreed that the same is due and owing.

### **CONCLUSIONS OF LAW**

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the petitioner-taxpayer to show that the assessment is incorrect and contrary to law, in whole or in part. See W. Va. Code § 11-10A-10(e) and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has carried the burden of proof with respect to the issue of whether certain of the payments were exempt from tax.

## **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the purchasers' use tax assessment issued against the Petitioner for the period of April 1, 1998 through March 31, 2003, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for tax, interest, on the revised tax, updated through November 15, 2003, and no additions to tax, for a total revised liability.

Because the Petitioner has previously remitted the assessed amount of purchasers' use tax for the period in question, no purchasers' use tax or interest thereon remains due to the State Tax Commissioner of West Virginia.